

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:20KLPOSTU-113571-02
EFMoates

date: **AUG 14 2002**

to: Neva Jo Schreier, Team Manager, Team Manager, Group 1412

attn: Terry Meadors, Senior Team Coordinator, Group 1412

from: Associate Area Counsel

subject: Request on flow through adjustments from [REDACTED] LLC
to the [REDACTED] Form 1120 - [REDACTED]

This is in response to your request concerning the flow through of adjustments from the [REDACTED] LLC to the [REDACTED] Form 1120 of [REDACTED] Inc. (hereinafter [REDACTED]). Based on the facts and documents provided, any adjustments made to the [REDACTED] Form 1065 of [REDACTED] LLC would not flow through to the [REDACTED] return of [REDACTED].

We informally coordinated this matter with the National Office, as the advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

FACTS

[REDACTED] is in the business of insurance brokerage. [REDACTED] specialized in advising clients on various insurance lines, including medical benefits. [REDACTED] has acted as one of [REDACTED] insurance brokers since [REDACTED] and as principal broker since [REDACTED].

[REDACTED] LLC (hereinafter the LLC) was formed in [REDACTED]. The LLC operating agreement was amended on [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

With respect to the (b)(3) [REDACTED] the LLC operating agreement provided for the following rights and privileges:

[REDACTED]

Additional provisions in the LLC operating agreement affecting the (b)(3) [REDACTED] are as follows:

[REDACTED]

[REDACTED] was admitted as a (b)(3) [REDACTED] member of the LLC on [REDACTED]. The appointment agreement dated [REDACTED] amended the [REDACTED] operating agreement with respect to the (b)(3) [REDACTED]

[REDACTED]

The appointment agreement provided the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The agreement further provided that [REDACTED]

[REDACTED]

The LLC for the year [REDACTED] was in operation for only [REDACTED]. The LLC filed a partnership return for [REDACTED] reflecting a loss of \$[REDACTED]. [REDACTED]'s [REDACTED] Form K-1 indicated only a \$[REDACTED] capital contribution from [REDACTED] with zeroes entered on all other applicable lines. Thus, none of the losses were allocated to [REDACTED]. A copy of [REDACTED]'s [REDACTED] return including the Form K-1 is attached hereto as Exhibit A.

The LLC was part of a listed transaction classified as a contingent liability tax shelter in accordance with Notice 2001-17.

DISCUSSION

In this instance, if the loss on the [REDACTED] Form 1065 were totally disallowed (a potential adjustment based on the LLC involvement in a tax shelter) it would not result in an adjustment on [REDACTED]'s Form 1120 return as it was not allocated

any of the loss. Furthermore, [REDACTED], as a (b)(3) [REDACTED], would only be allowed to receive an allocation of profits based on the rate of return on the capital contribution for each distribution period equal to the LIBOR rate plus [REDACTED] basis points. In this instance, [REDACTED] was in the LLC for only one day and no distribution period had occurred. Therefore, he would receive no allocation of the profits (had there been any) for [REDACTED].

Any adjustments to the LLC's partnership return would have no impact on [REDACTED]'s [REDACTED] Form 1120.

CONCLUSION

Based on our review of the facts and documents provided no adjustments made to the LLC return would flow through to [REDACTED]'s [REDACTED] Form 1120.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions, please contact Attorney Edith F. Moates at (405) 297-4832.

MARK A. O'LEARY (Group 2)
Associate Area Counsel

By: _____
EDITH F. MOATES
Senior Attorney